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Attorneys for Defendants

*Vision Service Plan, A/K/A VSP Global,  
VSP Ventures Management Services, LLC,  
Altair Eyewear, Inc., Eyefinity, Inc.,  
Marchon Eyewear, Inc., and VSP Labs, Inc.*

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

TOTAL VISION, LLC, et al,  
Plaintiffs,

v.

VISION SERVICE PLAN, a/k/a VSP  
GLOBAL, et al.,  
Defendants.

VISION SERVICE PLAN a/k/a VSP  
GLOBAL,

Counterclaimant,

v.

TOTAL VISION, LLC, et al.,  
Counterclaim Defendants.

Case No.: 8:23-cv-01805-CJC-DFM

**DEFENDANTS' ANSWER TO  
PLAINTIFFS' COMPLAINT AND  
AFFIRMATIVE DEFENSES AND  
VSP'S COUNTERCLAIMS**

1 For its Answer to the Complaint of Plaintiffs Total Vision LLC and Total  
2 Vision, P.C. (collectively, “Total Vision” or “Plaintiffs”) and Counterclaim,  
3 Defendants Vision Service Plan a/k/a VSP Global (“VSP”), VSP Ventures  
4 Management Services, LLC (“VSP Ventures”), Altair Eyewear, Inc. (“Altair”),  
5 Eyefinity, Inc. (“Eyefinity”), Marchon Eyewear, Inc. (“Marchon”), and VSP Labs,  
6 Inc. d/b/a VSPOne (“VSPOne”) (collectively, “Defendants”<sup>1</sup>), responds as follows.

7 Unless expressly admitted herein, Defendants deny the allegations set forth in  
8 the Complaint. Moreover, Defendants expressly deny that they engaged in any of  
9 the alleged wrongdoing described in the Complaint, and any statement in the  
10 Complaint which suggests that they did is false and is expressly denied. Plaintiffs  
11 also included throughout their Complaint unnumbered section “titles,” which are not  
12 reproduced here and do not require a response; to the extent the sections headings  
13 require a response, Defendants deny them and any and all allegations of unlawful  
14 conduct contained therein. Material cited in footnotes throughout Plaintiffs’  
15 Complaint are documents that speak for themselves and therefore require no  
16 response. To the extent a response is required, unless expressly otherwise addressed,  
17 they are denied.

18  
19 1. Defendants admit that VSP operates a vision insurance business, that  
20 certain VSP affiliates participate in optometry services and the sale of frames,  
21 lenses, and practice management software. Defendants deny the remaining  
22 allegations in Paragraph 1.

23 2. Defendants admit that Total Vision has acquired formerly independent  
24 optometry practices, but lack knowledge or information sufficient to form a belief as  
25 to the truth of the remaining allegations in Paragraph 2, and on that basis deny them.

26  
27 <sup>1</sup> Former Defendants Visionworks of America, Inc., Plexus Optix, Inc., and  
28 Eyeconic, Inc. were dismissed by the Court’s Order dated February 20, 2024, (ECF  
No. 35), and are therefore omitted here.

1           3. Defendants deny that independent optometry practices are “distinct”  
2 from “corporate” optometry practices as alleged, and lack knowledge or information  
3 sufficient to form a belief as to the remaining allegations in Paragraph 3, and on that  
4 basis deny them.

5           4. Defendants admit that VSP Ventures has bid on optometry practices  
6 that became Total Vision practices. Defendants lack information and knowledge  
7 sufficient to form a belief as to the truth of the allegations that Total Vision practices  
8 compete with Visionworks, and on that basis deny them. Defendants deny the  
9 remaining allegations in Paragraph 4.

10          5. Defendants admit that VSP and Total Vision entered into an agreement  
11 to do business in 2019. Defendants admit that prior to 2019, some doctors that later  
12 became affiliated with Total Vision had previously entered into Network Doctor  
13 Agreements, allowing them to provide in-network services to patients covered by  
14 VSP insurance. Defendants admit that Total Vision, P.C. was obligated to comply  
15 with the terms of agreements between the parties, and deny the remaining  
16 allegations in Paragraph 5.

17          6. Defendants deny the allegations in Paragraph 6.

18          7. Defendants deny the allegations in Paragraph 7.

19          8. Defendants admit that, given its corporate structure, Total Vision was  
20 not eligible to remain on the Premier program, but deny the remaining allegations in  
21 Paragraph 8.

22          9. Defendants deny the allegations in Paragraph 9.

23          10. Defendants admit that the parties entered into a new agreement (the  
24 “2020 Agreement”) in September 2020, but deny the remaining allegations in  
25 Paragraph 10.

26          11. Defendants deny the allegations in Paragraph 11.

27          12. Defendants admit that it reminded Total Vision of the 2020 Agreement  
28 expiration date and that the agreement would expire as written. Defendants deny the

1 remaining allegations in Paragraph 12.

2 13. Defendants lack knowledge and information sufficient to form a belief  
3 as to the truth of the allegation that one optometrist in Total Vision's network  
4 indicated that it would have sold to VSP Ventures rather than Total Vision if it had  
5 known that Total Vision would not be in VSP's network, and on that basis deny it.  
6 Defendants deny the remaining allegations in Paragraph 13.

7 14. Defendants deny the allegations in Paragraph 14.

8 15. Defendants admit that Total Vision brought this action and that it seeks  
9 injunctive relief and damages as a result. Defendants deny the remaining allegations  
10 in Paragraph 15.

11 16. Defendants admit that Total Vision, LLC is a Delaware limited liability  
12 company. Defendants lack knowledge and information sufficient to form a belief as  
13 to the truth of the remaining allegations in Paragraph 16, and on that basis deny  
14 them.

15 17. Defendants admit that Total Vision, P.C. is a California professional  
16 corporation. Defendants lack knowledge and information sufficient to form a belief  
17 as to the truth as to the remaining allegations in Paragraph 17, and on that basis deny  
18 them.

19 18. Defendants admit the allegations in Paragraph 18.

20 19. Defendants admit that Visionworks is a Texas corporation with a  
21 principal place of business in San Antonio, TX, but deny that it is a direct subsidiary  
22 of VSP, and state that it is an affiliated entity of VSP. Defendants deny the  
23 remaining allegations in Paragraph 19; Visionworks has been dismissed as a  
24 defendant in this action.

25 20. Defendants admit that VSP Ventures Management Services LLC is a  
26 Delaware limited liability corporation with its principal place of business in Rancho  
27 Cordova, California, but deny that it is a direct subsidiary of VSP, and state that it is  
28 an affiliated entity to VSP. Defendants deny the remaining allegations in Paragraph

20.

21. Defendants admit that Altair is a California corporation with its principal place of business in Rancho Cordova, California, but deny that it is a direct subsidiary of VSP, and state that it is an affiliated entity to VSP. Defendants deny the remaining allegations in Paragraph 21.

22. Defendants admits that Marchon is a New York corporation with its principal place of business in Melville, New York, but deny that it is a direct subsidiary of VSP, and state that it is an affiliated entity to VSP. Defendants deny the remaining allegations in Paragraph 22.

23. Defendants admit that Eyefinity is a Delaware corporation with its principal place of business in Rancho Cordova, California, but deny that it is a direct subsidiary of VSP, and state that it is an affiliated entity to VSP. Defendants deny the remaining allegations in Paragraph 23.

24. Defendants admit that Plexus is a Delaware corporation with its principal place of business in Rancho Cordova, California, but deny that it is a direct subsidiary of VSP, and state that it is an affiliated entity to VSP. Defendants deny the remaining allegations in Paragraph 24; Plexus has been dismissed as a defendant in this action.

25. Defendants admit that VSP Labs, Inc. is a Delaware corporation, admit that its principal place of business is Rancho Cordova, California, but deny that it is a direct subsidiary of VSP, and state that it is an affiliated entity of VSP and that “VSPOne” is a portion of a d/b/a it uses in its business. Defendants deny the remaining allegations in Paragraph 25.

26. Defendants admit that Eyeconic’s principal place of business is Rancho Cordova, California, but deny that it is a direct subsidiary of VSP, and state that it is a Delaware corporation and is an affiliated entity to VSP. Defendants deny the remaining allegations in Paragraph 26; Eyeconic has been dismissed as a defendant in this action.

1           27. Defendants admit that Total Vision has requested injunctive relief and  
2 damages in the Complaint but deny that it is entitled to relief or damages.

3 Defendants deny the remaining allegations in Paragraph 27.

4           28. Defendants admit the allegations in Paragraph 28.

5           29. Defendants admit that the Court has personal jurisdiction and that  
6 venue is proper with regard to the Defendants that remain in the case, and deny the  
7 remaining allegations in Paragraph 29.

8           30. Defendants lack knowledge or information sufficient to form a belief as  
9 to the truth of the allegations in Paragraph 30, and on that basis deny them.

10           31. Defendants admit that the number of locations a single optometry  
11 practice owned by one or more optometrists can have is limited under California  
12 law, but lack knowledge or information sufficient to form a belief as to the truth of  
13 the remaining allegations in Paragraph 31, and on that basis deny them.

14           32. Defendants lack knowledge or information sufficient to form a belief as  
15 to the truth of the remaining allegations in Paragraph 32, and on that basis deny  
16 them.

17           33. Defendants lack knowledge or information sufficient to form a belief as  
18 to the truth of the remaining allegations in Paragraph 33, and on that basis deny  
19 them.

20           34. Defendants admit that VSP was founded as a non-for-profit vision  
21 benefits and service company, admits that it does not have a tax exempt status in  
22 accordance with court decisions in 2005, and deny the remaining allegations in  
23 Paragraph 34.

24           35. Defendants admit that VSP has been a vision care insurer for many  
25 decades, admits that it offers services through its benefits line of business, VSP  
26 Vision Care. Defendants deny the remaining allegations in Paragraph 35.

27           36. Defendants admit that VSP or its affiliated entities have entered into  
28 businesses related to vision care, including those involving eyewear, lenses, practice

1 management software, optical labs, and retail optometry. Defendants admit that  
2 Defendant Altair was launched in 1992 and that an entity affiliated with VSP  
3 acquired Marchon in 2008. Defendants admit that Altair and Marchon licenses the  
4 rights to and sells eyewear under well-known brands such as Calvin Klein, Cole  
5 Haan, Nautica, Nike, and Ferragamo, among others. Defendants deny the remaining  
6 allegations in Paragraph 36.

7 37. Defendants admit that an affiliated entity to VSP owns the Unity lenses  
8 brand, and state that the VSP Optics website refers to Unity Lenses as “[t]he Fastest  
9 Growing Lens Brand In The Industry”, and that an entity affiliated with VSP  
10 launched its initial phase of Eyeconic.com, an online optical retailer that sells  
11 prescription eyewear and sunglasses, in addition to contact lenses, in 2011.  
12 Defendants deny the remaining allegations in Paragraph 37.

13 38. Defendants admit that Eyefinity provides practice management  
14 software to optometrists, that VSP Labs, Inc. operates optical laboratories, and that  
15 Eyefinity is an affiliated entity of VSP. Defendants further admit that an entity  
16 affiliated with VSP acquired Visionworks in 2019, and that Visionworks operates  
17 over 700 optometry locations across more than 40 states. Defendants admit that VSP  
18 Ventures acquires independent optometry practices as part of its business.  
19 Defendants lack knowledge and information sufficient to form a belief as to the  
20 truth of the allegation that VSP Ventures and Total Vision have more recently gone  
21 “head-to-head” in bidding for independent optometry practices, and on that basis  
22 deny it. Defendants deny the remaining allegations in Paragraph 38.

23 39. Defendants admit that over the years, VSP-affiliated entities have  
24 expanded their businesses into vision care related products and services. Defendants  
25 admit that an October 27, 2014 “Opinion” article in the Optometry Times referred to  
26 several companies with the partial phrase “control of the entire chain of vision care  
27 production.” Defendants deny the remaining allegations in Paragraph 39.

28 40. Defendants admit that VSP is a large vision insurer in California, and



1 that practices that are not in VSP's network may be reimbursed at out-of-network  
2 rates rather than in-network rates for services or products provided to VSP insureds.  
3 Defendants lack knowledge and information sufficient to form a belief as to the  
4 truth of the allegations concerning the alleged "market shares" referred and as to  
5 Total Vision's alleged revenue or the revenue of "most other independently owned  
6 optometry practices in California" in Paragraph 40, and on that basis deny them.  
7 Defendants deny the remaining allegations in Paragraph 40.

8 41. Defendants deny that VSP has a monopoly or market power over all  
9 vision insurance. Defendants deny that VSP is the nation's "most dominant" vision  
10 insurer. Defendants lack knowledge and information sufficient to form a belief as to  
11 the allegation concerning what the Department of Justice's Antitrust Division may  
12 have "noted" as early as the 1990s, and on that basis deny it. Defendants state that  
13 in 1994, the DOJ filed a Complaint against Vision Service Plan pertaining to clauses  
14 called Most Favored Nations clauses, and that prior to any trial or adjudication on  
15 any issue of fact or law in the matter, the parties entered into a consent judgment in  
16 1996, which has since expired. Defendants deny the remaining allegations in  
17 Paragraph 41.

18 42. Defendants admit that in 1994, the DOJ filed a Complaint against  
19 Vision Service Plan pertaining to clauses commonly referred to as most favored  
20 nations clauses, and that prior to any trial or adjudication on any issue of fact or law  
21 in the matter, the parties entered into a consent judgment in 1996, which has since  
22 expired. Defendants state that the final judgment in that matter states that it is a  
23 consent judgment, and that it shall not be considered as evidence against or an  
24 admission by any party about any issue of fact or law or that any violation of law  
25 occurred. Defendants deny that ¶ 11 of the Complaint is properly quoted, including  
26 because it omitted and changed words. Defendants deny the remaining allegations in  
27 Paragraph 42.

28 43. Defendants deny the allegations in Paragraph 43, and state that the



1 Plaintiffs' characterization of the 1996 Competitive Impact Statement is inaccurate,  
2 the document speaks for itself, and therefore no response is required.

3 44. Defendants deny the allegations in Paragraph 44. Plaintiffs'  
4 characterization of the 1996 Competitive Impact Statement is inaccurate, the  
5 document speaks for itself, and therefore no response is required.

6 45. Defendants lack knowledge and information sufficient to form a belief  
7 as to the truth of the allegations concerning the percentages related to Total Vision  
8 optometry practices in 2020, and on that basis deny them. Defendants deny the  
9 remaining allegations in Paragraph 45.

10 46. Defendants lack knowledge and information sufficient to form a belief  
11 as to the truth of the allegations in Paragraph 46 concerning the percentage of  
12 EyeMed accounts at Total Vision and the allegations concerning Total Vision's  
13 alleged market research and discussions, and on that basis deny them. Defendants  
14 also lack knowledge and information concerning the reasons that Total Vision may  
15 lack profitability and growth, and on that basis deny any such allegations.  
16 Defendants deny the remaining allegations in Paragraph 46.

17 47. Defendants admit that many employers in California, including those  
18 identified in Paragraph 47, have used VSP as their vision insurance provider.  
19 Defendants deny the remaining allegations in Paragraph 47.

20 48. Defendants admit that VSP has approximately 82 million "members"  
21 nationwide, but lack knowledge and information concerning the percentages  
22 identified by Total Vision in Paragraph 48, and on that basis deny those allegations.  
23 Defendants deny that VSP has monopoly power. Defendants deny the remaining  
24 allegations in Paragraph 48.

25 49. Defendants lack knowledge and information sufficient to form a belief  
26 as to the truth of the allegations that all "corporate optometry practices" are used by  
27 retail stores as "loss leaders," and on that basis deny them. Defendants deny the  
28 remaining allegations in Paragraph 49.

1           50. Defendants deny the allegations in Paragraph 50.

2           51. Defendants admit that James Comer, Chairman, Committee on  
3 Oversight and Accountability sent a letter dated August 8, 2023, to FTC Chair Lina  
4 Khan citing alleged information about VSP and others in publications such as  
5 ValuePenguin and Mark Farrah Associates, and asked to schedule a briefing.  
6 Defendants deny that VSP's alleged "power" poses any threat to healthy  
7 competition. Defendants deny the remaining allegations in Paragraph 51 including  
8 the accuracy of statements contained in the letter.

9           52. Defendants lack knowledge and information sufficient to form a belief  
10 as to the truth of the allegations concerning Total Vision's revenue in the first  
11 quarter of 2023 and the revenue of other independent optometry practices in  
12 California, and on that basis deny them. Defendants deny the remaining allegations  
13 in Paragraph 52.

14           53. Defendants admit that since VSP Ventures launched in 2019, it has  
15 acquired at least 84 independent optometry practices throughout the entire United  
16 States. Defendants lack knowledge and information sufficient to form a belief  
17 concerning whether one optometrist who sold their practice to Total Vision  
18 indicated that they would have instead sold their practice "to VSP" had they known  
19 that Total Vision would no longer be on VSP's network, and on that basis deny  
20 them. Defendants deny the remaining allegations in Paragraph 53.

21           54. Defendants deny the allegations in Paragraph 54.

22           55. Defendants admit that in 2018, Total Vision provided responses to  
23 VSP's standard questionnaire concerning an application to be on VSP's network,  
24 and admit that in 2018, Total Vision personnel and VSP began discussions  
25 concerning an agreement for Total Vision practices to be on VSP's network.  
26 Defendants deny that VSP's provision of insurance is essential to doing business.  
27 Defendants lack knowledge and information concerning the alleged assurances in  
28 2018 that unidentified independent optometrist could join Total Vision's network,

1 and on that basis deny those allegations. Defendants lack information and  
2 knowledge sufficient to form a belief as to the truth of the remaining allegations in  
3 Paragraph 55, and on that basis deny them.

4 56. Defendants admit that they entered into the 2019 Retail Agreement  
5 with effective date May 22, 2019, which provided for terms for the business  
6 arrangement between Total Vision and VSP, and that the 2019 Retail Agreement  
7 addressed, among other things, payment and claim transmission. Defendants admit  
8 that the 2019 Retail Agreement contained a one-year term that would continue for  
9 successive one-year terms unless either party gave notice of nonrenewal. The  
10 agreement also allowed individual doctors who had been members of the VSP  
11 doctor network to remain within that network while the 2019 Agreement remained  
12 in effect and those doctors remained affiliated with Total Vision. Defendants deny  
13 that it had a decades-long relationship with Total Vision. Defendants deny the  
14 remaining allegations in Paragraph 56.

15 57. Defendants admit that the 2019 Retail Agreement preserved VSP's  
16 discretion concerning admission of new doctors into its doctor network, deny  
17 refusing admission to any new doctor proposed by Total Vision, state that the 2019  
18 Retail Agreement speaks for itself and deny the allegations concerning its terms that  
19 are contrary to the actual agreement. Defendants deny the remaining allegations in  
20 Paragraph 57.

21 58. Defendants deny that any of the provisions of the 2019 Retail  
22 Agreement were "anticompetitive," state that the 2019 Retail Agreement speaks for  
23 itself and deny the allegations concerning its terms that are contrary to the actual  
24 agreement. Defendants deny the remaining allegations in Paragraph 58.

25 59. Defendants state that the provisions of the 2019 Retail Agreement  
26 speak for themselves and deny any allegations concerning its terms that are contrary  
27 to the actual agreement. Defendants deny the remaining allegations in Paragraph 59.

28

1           60. Defendants deny making defendants agree to the quoted terms, deny  
2 that the quoted terms harmed Total Vision and deny artificially lowering  
3 reimbursement rates as alleged. Defendants state that the provisions of the 2019  
4 Retail Agreement speak for themselves and deny any allegations concerning its  
5 terms that are contrary to the actual agreement. Defendants deny the remaining  
6 allegations in Paragraph 60.

7           61. Defendants deny the allegations in Paragraph 61.

8           62. Defendants state that Total Vision agreed to use commercially  
9 reasonable efforts to purchase agreed amounts of Unity lenses, state the provisions  
10 of the 2019 Retail Agreement speak for themselves, and deny any allegations  
11 concerning its terms that are contrary to the actual agreement. Defendants deny the  
12 remaining allegations in Paragraph 62.

13           63. Defendants deny the allegations in Paragraph 63.

14           64. Defendants lack knowledge and information sufficient to form a belief  
15 as to the truth of the allegations concerning the unidentified “older” versions of  
16 Unity lenses, and the need to “redo” patient’s eyeglasses, and on that basis deny  
17 them. Defendants deny the remaining allegations contained in Paragraph 64.

18           65. Defendants state that the provisions of the 2019 Retail Agreement  
19 speak for themselves and deny any allegations concerning its terms that are contrary  
20 to the actual agreement. Defendants deny the remaining allegations in Paragraph  
21 65.

22           66. Defendants state that the provisions of the 2019 Retail Agreement  
23 speak for themselves and deny any allegations concerning its terms that are contrary  
24 to the actual agreement. Defendants deny the remaining allegations in Paragraph  
25 66.

26           67. Defendants state that the provisions of the 2019 Retail Agreement  
27 speak for themselves and deny any allegations concerning its terms that are contrary  
28 to the actual agreement. Defendants deny the remaining allegations in Paragraph

1 67.

2 68. Defendants deny the allegations in Paragraph 68.

3 69. Defendants deny the allegations in Paragraph 69.

4 70. Defendants deny the allegations in Paragraph 70.

5 71. Defendants deny the allegations in Paragraph 71.

6 72. Defendants deny the first sentence of paragraph 72. Regarding the  
7 second sentence, defendants admit opening two Eyeconic stores in the Chicago area,  
8 which later closed. Defendants admit being interested in retailing. Defendants deny  
9 the remaining allegations in paragraph 72.

10 73. Defendants admit that VSP Ventures was launched in or around March  
11 2019 and its business involves acquisition of former independent optometry  
12 practices, which means that it possibly could compete with Total Vision or other  
13 entities who also wish to acquire the same practices from time to time. Defendants  
14 admit that VSP Ventures has acquired at least twelve practices since 2019, and that  
15 in a few instances a doctor may have offered their practice for sale to both Total  
16 Vision and Ventures. Defendants admit optometrists who sell practices to VSP  
17 Ventures become employees of a professional corporation and do not become co-  
18 owners of VSP Ventures, which cannot offer equity enhancements like Total Vision.  
19 Defendants admit that VSP Ventures' business differs from Total Vision's model.  
20 Defendants deny the remaining allegations in Paragraph 73.

21 74. Defendants lack knowledge and information sufficient to form a belief  
22 as to the truth of the allegation that one doctor expressed that he or she would have  
23 sold their practice to VSP Ventures rather than Total Vision had he or she known  
24 that Total Vision would no longer be on VSP's network, and on that basis deny it.  
25 Defendants deny the remaining allegations in Paragraph 74.

26 75. Defendants admit that James Comer, Chairman, Committee on  
27 Oversight and Accountability sent a letter dated August 8, 2023, to FTC Chair Lina  
28 Khan citing alleged information about VSP and others in publications such as

1 ValuePenguin and Mark Farrah Associates, and asked to schedule a briefing.

2 Defendants state that the sentences quoted are taken out of context and, as such are  
3 untrue, and that, as a vision insurance provider, it is not in VSP's interest to inflate  
4 vision care expenses. Defendants deny the remaining allegations in Paragraph 75.

5 76. Defendants admit that VSP has explained that it does not seek to  
6 expand its business with practices controlled by private equity or similar business  
7 models as part of its assessment of the scope of its provider network and retail  
8 strategy and provided information to doctors concerning a hold effective April 15,  
9 2019, on any new network arrangements with private equity or similar backed  
10 groups. Defendants deny the remaining allegations in Paragraph 76.

11 77. Defendants admit that an entity affiliated with VSP acquired  
12 Visionworks in 2019, and that Visionworks operates over 700 optometry locations  
13 across more than 40 states. Defendants admit that at the time of the acquisition,  
14 Visionworks was the sixth largest optical chain in the United States. Defendants  
15 admit that the Visionworks acquisition was announced and discussed in optometry  
16 publications. Defendants deny the remaining allegations in Paragraph 77.

17 78. Defendants lack knowledge and information sufficient to form a belief  
18 as to the allegation that Visionworks was the seventh largest optical retailer in the  
19 United States, and on that basis deny it. Defendants admit that in 2021 Visionworks  
20 had approximately 716 locations across the United States and that it had over 1  
21 billion in annual gross sales total at that time, but state it had no locations in  
22 California at that time. Defendants deny that Visionworks (or VSP) currently owns  
23 50 California practices. Defendants lack knowledge and information sufficient to  
24 form a belief as to whether 29 practices owned by a VSP affiliated company are  
25 "now" within 20 miles of a Total Vision practice, and on that basis deny those  
26 allegations. Defendants deny the remaining allegations in Paragraph 78.

27 79. Defendants admit that VSP informed Total Vision (and other similar  
28 retail groups) that it would no longer be in the Premier program in November 2019



1 in accordance with its rights under the 2019 Agreement. Defendants deny that it  
2 made any “threat.” Defendants deny any further allegations in Paragraph 79.

3 80. Defendants admit that practices in the Premier program are tagged with  
4 a Premier banner. Defendants lack knowledge and information sufficient to form a  
5 belief about whether patients who search for in-network providers are more likely to  
6 actually frequent practices with Premier status, and on that basis deny the allegation.  
7 Defendants admit that some practices used the Premier program before joining Total  
8 Vision, and admit that some of the phrases in Paragraph 80 appear to be partial  
9 quotes from a prior version of the VSP Vision website. Defendants admit that Total  
10 Vision practices (like other similar private-equity backed retail groups) were no  
11 longer eligible to participate in the Premier program in 2020. Defendants deny the  
12 remaining allegations in Paragraph 80.

13 81. Defendants deny the allegations in Paragraph 81.

14 82. Defendants admit that VSP communicated to Total Vision that Total  
15 Vision could not remain in the Premier program so long as it was a private equity  
16 owned or backed entity. Defendants deny the remaining allegations in Paragraph 82.

17 83. Defendants admit that VSP provided Total Vision with a notice of non-  
18 renewal of the 2019 Retail Agreement and state that the letter speaks for itself.  
19 Defendants deny the remaining allegations in Paragraph 83.

20 84. Defendants admit that VSP and Total Vision negotiated about a new  
21 agreement in the spring of 2020, and admit that one of the things discussed was a  
22 limit to additional practices that Total Vision could add to VSP’s network (as  
23 opposed to Total Vision’s overall growth). Defendants deny the remaining  
24 allegations in Paragraph 84.

25 85. Defendants admit that representatives of VSP and Total Vision  
26 continued negotiations concerning potential terms of an agreement, including in  
27 April and May of 2020. Defendants admit that VSP sent a meeting invite that  
28 included a list of “Next Step Discussion Points,” which included “Capping Location



1 Growth,” which referred to the addition of practices onto the VSP provider network.  
2 Defendants admit that there was another conference call between the parties on May  
3 15, 2020, and that during negotiations, VSP offered to allow Total Vision to add  
4 another fifteen practices onto the VSP Network, which Total Vision rejected.  
5 Defendants deny the remaining allegations in Paragraph 85.

6 86. Defendants admit that on or about June 11, 2020, VSP made an offer to  
7 renew the agreement with Total Vision on terms that included, among other things,  
8 the addition of 15 more Total Vision practices to the VSP Network and a one-year  
9 renewal term. Defendants admit that during June and/or July 2020, representatives  
10 of Total Vision or their attorneys accused VSP of antitrust violations. Defendants  
11 deny the remaining allegations in Paragraph 86.

12 87. Defendants admit that representatives of VSP and Total Vision and  
13 Bregal Investments and Total Vision’s outside counsel had a conference call on  
14 August 4, 2020. Defendants admit there were discussions by Ms. Fields and others  
15 concerning, among other things, possible agreement terms that would cap the total  
16 number of new Total Vision practices that would be added to the VSP network.  
17 Defendants deny the remaining allegations in Paragraph 87.

18 88. Defendants admit that after the August 4, 2020, conference call, Total  
19 Vision provided a revised draft of a Retail Agreement to VSP, and state that the  
20 parties thereafter exchanged in further email communications after that. Defendants  
21 admit that after the parties had reached an impasse in negotiations and the 2019  
22 Retail Agreement and all extensions had expired, VSP advised Total Vision that, in  
23 accordance with the terms of that Agreement, the Total Vision practices would be  
24 removed from VSP’s provider network. Defendants deny the remaining allegations  
25 in Paragraph 88.

26 89. Defendants admit that, after months of negotiations that resulted in an  
27 impasse, and in accordance with the 2019 Retail Agreement, VSP informed the  
28 Total Vision representatives that Total Vision doctors would no longer be on the

1 VSP provider network, and sent notices to those doctors on August 10, 2020.

2 Defendants deny the remaining allegations in Paragraph 89.

3 90. Defendants lack knowledge and information sufficient to form a belief  
4 as to the truth of the allegations that Total Vision providers found alternative  
5 coverage and arrangements for patients, and therefore deny them. Defendants deny  
6 the remaining allegations in Paragraph 90.

7 91. Defendants lack knowledge and information sufficient to form a belief  
8 as to the truth of the allegations concerning the alleged reactions of patients during  
9 August and September of 2020, or what Total Vision required them to pay, and  
10 therefore deny them. Defendants deny the remaining allegations in Paragraph 91.

11 92. Defendants lack knowledge and information sufficient to form a belief  
12 as to the truth of the allegations concerning whether at the time of the termination in  
13 2020 Total Vision was negotiating agreement 41 practices and whether there were  
14 letters of intent or non-disclosure agreements, and therefore deny them. Defendants  
15 deny the remaining allegations in Paragraph 92.

16 93. Defendants deny the allegations in Paragraph 93.

17 94. Defendants deny the allegations in Paragraph 94.

18 95. Defendants deny the allegations in Paragraph 95.

19 96. Defendants admit that Total Vision and VSP continued negotiating  
20 throughout August and September of 2020, culminating in the 2020 Agreement.  
21 Defendants deny the remaining allegations in Paragraph 96.

22 97. Defendants state that the 2020 Agreement speaks for itself and deny the  
23 allegations concerning its terms that are contrary to the actual agreement.  
24 Defendants deny that the 2020 Agreement restricted Total Vision's growth.  
25 Defendants deny the remaining allegations in Paragraph 97.

26 98. Defendants deny that VSP "made" Total Vision agree to anything, state  
27 that the 2020 Agreement speaks for itself and deny the allegations concerning its  
28 terms that are contrary to the actual agreement. Defendants deny the remaining

1 allegations in Paragraph 98.

2 99. Defendants deny that VSP “required” Total Vision to enter into the  
3 2020 Agreement, state that the 2020 Agreement speaks for itself and deny the  
4 allegations concerning its terms that are contrary to the actual agreement.  
5 Defendants deny the remaining allegations in Paragraph 99.

6 100. Defendants admit that Total Vision agreed to the terms in the 2020  
7 Agreement, including those concerning use of the Eyefinity practice management  
8 and electronic health record solutions, and that Total Vision did not violate those  
9 provisions. Defendants state that the 2020 Agreement speaks for itself and deny the  
10 allegations concerning its terms that are contrary to the actual agreement.  
11 Defendants deny the remaining allegations in Paragraph 100.

12 101. Defendants admit that Total Vision agreed to the terms in the 2020  
13 Agreement, including those concerning participation in VSP’s Premier Program and  
14 reimbursement rates. Defendants state that the 2020 Agreement speaks for itself and  
15 deny the allegations concerning its terms that are contrary to the actual agreement.  
16 Defendants deny the remaining allegations in Paragraph 101.

17 102. Defendants admit that Total Vision agreed to the terms in the 2020  
18 Agreement, including a standard “Change of Control” provision. Defendants state  
19 that the 2020 Agreement speaks for itself and deny the allegations concerning its  
20 terms that are contrary to the actual agreement. Defendants deny the remaining  
21 allegations in Paragraph 102.

22 103. Defendants admit that Total Vision agreed to the terms in the 2020  
23 Agreement, including terms concerning Total Vision’s agreed exit from the VSP  
24 provider network. Defendants state that the 2020 Agreement speaks for itself and  
25 deny the allegations concerning its terms that are contrary to the actual agreement.  
26 Defendants deny the remaining allegations in Paragraph 103.

27 104. Defendants admit that Total Vision agreed to the terms in the 2020  
28 Agreement, including a mutual release of claims, state that the 2020 Agreement

1 speaks for itself and deny the allegations concerning its terms that are contrary to the  
2 actual agreement. Defendants deny the remaining allegations in Paragraph 104.

3 105. Defendants state that the 2020 Agreement speaks for itself and deny the  
4 allegations concerning its terms that are contrary to the actual agreement.  
5 Defendants deny the remaining allegations in Paragraph 105.

6 106. Defendants state that the 2020 Agreement speaks for itself and deny the  
7 allegations concerning its terms that are contrary to the actual agreement.  
8 Defendants deny the remaining allegations in Paragraph 106.

9 107. Defendants state that the 2020 Agreement speaks for itself and deny the  
10 allegations concerning its terms that are contrary to the actual agreement.  
11 Defendants deny the remaining allegations in Paragraph 107.

12 108. Defendants state that the 2020 Agreement speaks for itself and deny the  
13 allegations concerning its terms that are contrary to the actual agreement. The  
14 allegations in Paragraph 108 contain legal conclusions to which no response is  
15 required. To the extent a response is required, Defendants deny those allegations.  
16 Defendants deny the remaining allegations in Paragraph 108.

17 109. Defendants state that the 2020 Agreement speaks for itself and deny the  
18 allegations concerning its terms that are contrary to the actual agreement. The  
19 allegations in Paragraph 109 contain legal conclusions, to which no response is  
20 required. To the extent a response is required, Defendants deny those allegations.  
21 Defendants deny the remaining allegations in Paragraph 109.

22 110. Defendants admit that Total Vision raised antitrust threats prior to  
23 entering into the 2020 Agreement, which included a release of such claims.  
24 Defendants state that the 2020 Agreement speaks for itself and deny the allegations  
25 concerning its terms that are contrary to the actual agreement. The allegations in  
26 Paragraph 110 contain legal conclusions, to which no response is required. To the  
27 extent a response is required, Defendants deny those allegations. Defendants deny  
28 the remaining allegations in Paragraph 110.

1 111. The allegations in Paragraph 111 contain legal conclusions to which no  
2 response is required. To the extent a response is required, Defendants deny the  
3 allegations in Paragraph 111.

4 112. The allegations in Paragraph 112 contain legal conclusions to which no  
5 response is required. To the extent a response is required, Defendants deny the  
6 allegations in Paragraph 112.

7 113. The allegations in Paragraph 113 contain legal conclusions to which no  
8 response is required. To the extent a response is required, Defendants deny the  
9 allegations in Paragraph 113.

10 114. The allegations in Paragraph 114 contain legal conclusions to which no  
11 response is required. To the extent a response is required, Defendants deny the  
12 allegations in Paragraph 114.

13 115. Defendants deny the allegations in Paragraph 115.

14 116. The allegations in Paragraph 116 contain legal conclusions to which no  
15 response is required. To the extent a response is required, Defendants deny the  
16 allegations in Paragraph 116.

17 117. The allegations in Paragraph 117 contain legal conclusions to which no  
18 response is required. To the extent a response is required, Defendants deny the  
19 allegations in Paragraph 117.

20 118. Defendants state that the 2020 Agreement speaks for itself and deny the  
21 allegations concerning its terms that are contrary to the actual agreement. The  
22 allegations in Paragraph 118 contain legal conclusions to which no response is  
23 required. To the extent a response is required, Defendants deny those allegations.  
24 Defendants deny the remaining allegations in Paragraph 118.

25 119. Defendants state that the 2020 Agreement speaks for itself and deny the  
26 allegations concerning its terms that are contrary to the actual agreement. The  
27 allegations in Paragraph 119 contain legal conclusions to which no response is  
28 required. To the extent a response is required, Defendants deny those allegations.

1 Defendants deny the remaining allegations in Paragraph 119.

2 120. Defendants state that the 2020 Agreement speaks for itself and deny the  
3 allegations concerning its terms that are contrary to the actual agreement. The  
4 allegations in Paragraph 120 contain legal conclusions to which no response is  
5 required. To the extent a response is required, Defendants deny those allegations.  
6 Defendants deny the remaining allegations in Paragraph 120.

7 121. Defendants deny the allegations in Paragraph 121.

8 122. Defendants lack knowledge and information sufficient to form a belief  
9 as to the truth of the allegations concerning the offers Total Vision alleges it  
10 received, and on that basis deny them. Defendants deny the remaining allegations in  
11 Paragraph 122.

12 123. Defendants deny the allegations in Paragraph 123.

13 124. Defendants deny the allegations in Paragraph 124.

14 125. Defendants deny that Mr. Worrall reached out to Total Vision, LLC in  
15 September 2022, admit that he attended calls with Mr. Collier of Total Vision and  
16 admit that VSP personnel including Mr. Worrall reminded Total Vision on several  
17 occasions that the 2020 Agreement was set to expire in 2023 and that VSP did not  
18 plan to renew it. Defendants deny the remaining allegations in Paragraph 125.

19 126. Defendants lack knowledge and information sufficient to form a belief  
20 as to the truth of the allegations concerning the phone call, including which phone  
21 call is referred to, and on that basis deny them. Defendants admit that Mr. Worrall  
22 of VSP and Mr. Collier of Total Vision attended some phone calls, including about  
23 Total Vision's proposed sale of its business and that the parties could try to get an  
24 NDA in place to consider it. Defendants deny the remaining allegations in  
25 Paragraph 126.

26 127. Defendants lack knowledge and information sufficient to form a belief  
27 as to the truth of Paragraph 127, and on that basis deny them.

28 128. Defendants lack knowledge and information sufficient to form a belief

1 as to the truth of the allegations concerning whether Total Vision was negotiating in  
2 good faith, and on that basis deny them. Defendants deny the remaining allegations  
3 in Paragraph 128.

4 129. Defendants admit that VSP sent a letter dated December 12, 2022, state  
5 that the letter speaks for itself and deny the allegations about the terms of the letter  
6 that are contrary to the actual letter. Defendants deny the remaining allegations in  
7 Paragraph 129.

8 130. Defendants admit that VSP sent a letter dated December 12, 2022, state  
9 that the letter speaks for itself, and deny the allegations about the terms of the letter  
10 that are contrary to the actual letter. Defendants deny the remaining allegations in  
11 Paragraph 130.

12 131. Defendants admit that VSP made an offer, state that the letter speaks  
13 for itself and deny the allegations about the terms of the letter that are contrary to the  
14 actual letter, and lack knowledge and information sufficient to form a belief as to the  
15 truth of the allegations that the valuation was below other “indications” or “offers”  
16 provided by others, and on that basis deny them. Defendants deny the remaining  
17 allegations in Paragraph 131.

18 132. Defendants deny the allegations in Paragraph 132.

19 133. Defendants admit that VSP sent a letter dated March 7, 2023, state that  
20 the letter speaks for itself, and deny the allegations about the terms of the letter that  
21 are contrary to the actual letter. Defendants deny that Total Vision had not received  
22 reminders of the expiration date of the 2020 Agreement, including the letter in  
23 December 2022. Defendants deny the remaining allegations in Paragraph 133.

24 134. Defendants deny the allegations of Paragraph 134.

25 135. Defendants admit that VSP received an emailed letter dated July 20,  
26 2023, from Total Vision’s outside counsel, state that the letter speaks for itself and  
27 deny the allegations about the terms that are contrary to the actual letter.

28 Defendants deny the remaining allegations in Paragraph 135.



1 136. Defendants admit that VSP responded in writing by letter from its  
2 outside counsel dated August 2, 2023, state that the letter speaks for itself and deny  
3 the allegations about its terms that are contrary to the terms of the actual letter.  
4 Defendants deny the remaining allegations in Paragraph 136.

5 137. Defendants lack knowledge and information sufficient to form a belief  
6 as to the truth of the allegations concerning the unidentified “multiple proposals” are  
7 referred to in Paragraph 137, and on that basis deny them. Defendants admit that the  
8 parties did not reach any agreements to further extend the 2020 Agreement after it  
9 expired by its terms in September 2023, and state that the Defendants cooperated in  
10 the exit of the practices from the network in or around September 2023. Defendants  
11 deny “conflating” matters. Defendants deny the remaining allegations in Paragraph  
12 137.

13 138. Defendants lack knowledge and information sufficient to form a belief  
14 as to whether VSP “profited handsomely” under the 2020 Agreement or whether it  
15 was “lucrative” for VSP as alleged, and on that basis deny those allegations.  
16 Defendants deny the remaining allegations in Paragraph 138.

17 139. Defendants deny the allegations in Paragraph 139.

18 140. Defendants admit that an affiliated entity to VSP acquired  
19 Visionworks. Defendants lack knowledge and information sufficient to form a  
20 belief as to the number of practices that currently are Total Vision practices or its  
21 current ownership structure, and on that basis deny those allegations. To the extent  
22 the allegations in Paragraph 149 contain legal conclusions, no response is required.  
23 To the extent a response is required, Defendants deny those allegations. Defendants  
24 deny the remaining allegations in Paragraph 140.

25 141. The allegations in Paragraph 141 contain legal conclusions to which no  
26 response is required. To the extent a response is required, Defendants deny the  
27 allegations in Paragraph 141.

28 142. The allegations in Paragraph 142 contain legal conclusions to which no

1 response is required. To the extent a response is required, Defendants deny the  
2 allegations in Paragraph 142.

3 143. The allegations in Paragraph 143 contain legal conclusions to which no  
4 response is required. To the extent a response is required, Defendants deny the  
5 allegations in Paragraph 143.

6 144. The allegations in Paragraph 144 contain legal conclusions to which no  
7 response is required. To the extent a response is required, Defendants deny the  
8 allegations in Paragraph 144.

9 145. The allegations in Paragraph 145 contain legal conclusions to which no  
10 response is required. To the extent a response is required, Defendants deny the  
11 allegations in Paragraph 145.

12 146. The allegations in Paragraph 146 contain legal conclusions to which no  
13 response is required. To the extent a response is required, Defendants admit the  
14 allegations in Paragraph 146.

15 147. The allegations in Paragraph 147 contain legal conclusions to which no  
16 response is required. To the extent a response is required, Defendants deny the  
17 allegations in Paragraph 147.

18 148. To the extent the allegations in Paragraph 148 contain legal  
19 conclusions, no response is required. To the extent a response is required,  
20 Defendants admit that ophthalmologists, like optometrists, similarly focus on the  
21 assessment of eyes, that they can also provide care for other types of eye disease and  
22 conditions, and that there are some differences between ophthalmologists and  
23 optometrists. Defendants deny the remaining allegations in Paragraph 148.

24 149. To the extent the allegations in Paragraph 149 contain legal  
25 conclusions, no response is required. To the extent a response is required,  
26 Defendants deny those allegations. Defendants deny the remaining allegations in  
27 Paragraph 149.

28 150. Defendants deny the generalizations that Plaintiffs attempt to make in

Paragraph 150 as incorrect. To the extent the allegations in Paragraph 150 contain legal conclusions, no response is required. To the extent a response is required, Defendants deny those allegations. Defendants deny the remaining allegations in Paragraph 150.

151. Defendants deny the allegations in Paragraph 151.

152. Defendants admit that patients can buy glasses and contact lenses on the internet, and that most eye exams and diagnoses should be conducted by trained professionals. To the extent the allegations in Paragraph 152 contain legal conclusions, no response is required. To the extent a response is required, Defendants deny those allegations. Defendants deny the remaining allegations in Paragraph 152.

153. Defendants admit that optometry practices, like other practices, are subject to California laws, and that VSP's website can provide information to help people find locations in California and other states for eye care. Defendants lack knowledge and information sufficient to form a belief as to the allegations concerning Total Vision's operations, and on that basis deny them. The allegations in Paragraph 153 contain legal conclusions to which no response is required. To the extent a response is required, Defendants deny those allegations. Defendants deny the remaining allegations of Paragraph 153.

154. The allegations in Paragraph 154 contain legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 154.

155. Defendants admit that vision insurance can cover a patient's costs (sometimes with a copay) for eye exams and optical goods and services, which may include eyeglasses, contact lenses, treatments, and other matters. To the extent the allegations in Paragraph 155 contain legal conclusions, no response is required. To the extent a response is required, Defendants deny those allegations. Defendants deny the remaining allegations in Paragraph 155.

1 156. Defendants lack knowledge and information sufficient to form a belief  
2 as to the truth of the allegations in Paragraph 156, and on that basis deny them.

3 157. Defendants admit that vision insurance can decrease costs of patients'  
4 vision care, as can other options that patients use to pay for glasses and contacts. To  
5 the extent the allegations in Paragraph 157 contain legal conclusions, no response is  
6 required. To the extent a response is required, Defendants deny those allegations.  
7 Defendants deny the remaining allegations in Paragraph 157.

8 158. The allegations in Paragraph 158 contain legal conclusions to which no  
9 response is required. To the extent a response is required, Defendants deny the  
10 allegations in Paragraph 158.

11 159. The allegations in Paragraph 159 contain legal conclusions to which no  
12 response is required. To the extent a response is required, Defendants deny the  
13 allegations in Paragraph 159.

14 160. The allegations in Paragraph 160 contain legal conclusions to which no  
15 response is required. To the extent a response is required, Defendants deny the  
16 allegations in Paragraph 160.

17 161. Defendants admit that state regulations concerning vision insurance can  
18 vary. To the extent the allegations in Paragraph 161 contain legal conclusions, no  
19 response is required. To the extent a response is required, Defendants deny those  
20 allegations. Defendants deny the remaining allegations in Paragraph 161.

21 162. The allegations in Paragraph 162 contain legal conclusions to which no  
22 response is required. To the extent a response is required, Defendants deny the  
23 allegations in Paragraph 162.

24 163. Defendants admit that some lenses are hard, and that lenses and frames  
25 constitute glasses that are worn by consumers to correct vision or for use as  
26 sunglasses. Defendants admit that frames are sometimes manufactured and sold  
27 separately from the lenses they contain, and by different manufacturers. Defendants  
28 deny the remaining allegations in Paragraph 163.

1           164. Defendants admit that consumers can chose to correct their vision using  
2 glasses or with contact lenses, or both. To the extent the allegations in Paragraph  
3 164 contain legal conclusions, no response is required. To the extent a response is  
4 required, Defendants deny those allegations. Defendants deny the remaining  
5 allegations in Paragraph 164.

6           165. To the extent the allegations in Paragraph 165 contain legal  
7 conclusions, no response is required. To the extent a response is required,  
8 Defendants deny those allegations. Defendants deny the remaining allegations in  
9 Paragraph 165.

10           166. The allegations in Paragraph 166 contain legal conclusions to which no  
11 response is required. To the extent a response is required, Defendants deny the  
12 allegations in Paragraph 166.

13           167. The allegations in Paragraph 167 contain legal conclusions to which no  
14 response is required. To the extent a response is required, Defendants deny the  
15 allegations in Paragraph 167.

16           168. Defendants admit that glasses lenses can be hard lenses that are inserted  
17 into frames to be worn on the fact by consumers to correct vision or to be used for  
18 other purposes, including as sunglasses or safety, and deny the remaining allegations  
19 in Paragraph 168.

20           169. Defendants admit that both contact lenses and glasses can be worn to  
21 correct vision. To the extent the allegations in Paragraph 169 contain legal  
22 conclusions, no response is required. To the extent a response is required,  
23 Defendants deny those allegations. Defendants deny the remaining allegations in  
24 Paragraph 169.

25           170. To the extent the allegations in Paragraph 170 contain legal  
26 conclusions, no response is required. To the extent a response is required,  
27 Defendants deny those allegations. Defendants deny the remaining allegations in  
28 Paragraph 170.

1 171. The allegations in Paragraph 171 contain legal conclusions to which no  
2 response is required. To the extent a response is required, Defendants deny the  
3 allegations in Paragraph 171.

4 172. The allegations in Paragraph 172 contain legal conclusions to which no  
5 response is required. To the extent a response is required, Defendants deny the  
6 allegations in Paragraph 172.

7 173. Defendants admit that practice management software is software used  
8 with computers that helps practices with organizing and record-keeping support,  
9 among other things. To the extent the allegations in Paragraph 173 contain legal  
10 conclusions, no response is required. To the extent a response is required,  
11 Defendants deny those allegations. Defendants deny the remaining allegations in  
12 Paragraph 173.

13 174. To the extent the allegations in Paragraph 174 contain legal  
14 conclusions, no response is required. To the extent a response is required,  
15 Defendants deny those allegations. Defendants deny the remaining allegations in  
16 Paragraph 174.

17 175. To the extent the allegations in Paragraph 175 contain legal  
18 conclusions, no response is required. To the extent a response is required,  
19 Defendants deny those allegations. Defendants deny the remaining allegations in  
20 Paragraph 175.

21 176. The allegations in Paragraph 176 contain legal conclusions to which no  
22 response is required. To the extent a response is required, Defendants deny the  
23 allegations in Paragraph 176.

24 177. Defendants state that the Court dismissed Plaintiffs' purported tying  
25 claims. The allegations in Paragraph 177 contain legal conclusions to which no  
26 response is required. To the extent a response is required, Defendants deny the  
27 allegations in Paragraph 177.

28 178. Defendants state that the Court dismissed Plaintiffs' purported tying

1 claims. The allegations in Paragraph 178 contain legal conclusions to which no  
2 response is required. To the extent a response is required, Defendants deny the  
3 allegations in Paragraph 178.

4 179. Defendants state that the Court dismissed Plaintiffs' purported tying  
5 claims. The allegations in Paragraph 179 contain legal conclusions to which no  
6 response is required. To the extent a response is required, Defendants deny the  
7 allegations in Paragraph 179.

8 180. Defendants state that the Court dismissed Plaintiffs' purported tying  
9 claims. The allegations in Paragraph 180 contain legal conclusions to which no  
10 response is required. To the extent a response is required, Defendants deny the  
11 allegations in Paragraph 180.

12 181. Defendants state that the Court dismissed Plaintiffs' purported tying  
13 claims. The allegations in Paragraph 181 contain legal conclusions to which no  
14 response is required. To the extent a response is required, Defendants deny the  
15 allegations in Paragraph 181.

16 182. Defendants state that the Court dismissed Plaintiffs' purported tying  
17 claims. The allegations in Paragraph 182 contain legal conclusions to which no  
18 response is required. To the extent a response is required, Defendants deny the  
19 allegations in Paragraph 182.

20 183. Defendants admit that laws have been enacted in Nevada and Texas,  
21 which speak for themselves, and deny any allegations about the terms of those laws  
22 that are inconsistent with the terms of the laws themselves. Defendants admit that  
23 one of the laws in Texas was recently enjoined by a court in Texas. Defendants  
24 deny the remaining allegations in Paragraph 183.

25 184. Defendants admit that a proposed Act entitled the Dental and  
26 Optometric Care (DOC) Access Act was reintroduced in the Senate on May 3, 2023,  
27 admits that VSP has engaged in lobbying activities and opposed passage of certain  
28 aspects of the Act, state that the Act has not been passed, and deny the remaining



1 allegations in Paragraph 184.

2 185. Defendants state that the 2020 Agreement expired and that Total Vision  
3 notified VSP to remove its providers from the VSP network prior to the expiration  
4 date. Defendants deny the remaining allegations in Paragraph 185.

5 186. Defendants deny the allegations in Paragraph 186

6 187. To the extent the allegations in Paragraph 187 contain legal conclusions  
7 to which no response is required. To the extent a response is required, Defendants  
8 deny those allegations. Defendants deny that Total Vision practices are  
9 “independent,” and state they are private-equity backed. Defendants deny the  
10 remaining allegations in Paragraph 187.

11 188. To the extent the allegations in Paragraph 188 contain legal conclusions  
12 to which no response is required. To the extent a response is required, Defendants  
13 deny those allegations. Defendants deny the remaining allegations in Paragraph 188.

14 189. Defendants deny the allegations in Paragraph 189.

15 190. Defendants admit that the number of locations a single optometry  
16 practice owned by one or more optometrists can have is limited under California  
17 law, admit that optometrists may pool their nonclinical assets in ways that may not  
18 violate that law, and deny the remaining allegations in Paragraph 190.

19 191. The allegations in Paragraph 191 contain legal conclusions to which no  
20 response is required. To the extent a response is required, Defendants deny the  
21 allegations in Paragraph 191.

22 192. The allegations in Paragraph 192 contain legal conclusions to which no  
23 response is required. To the extent a response is required, Defendants deny the  
24 allegations in Paragraph 192.

25 193. The allegations in Paragraph 193 contain legal conclusions to which no  
26 response is required. To the extent a response is required, Defendants deny the  
27 allegations in Paragraph 193.

28 194. The allegations in Paragraph 194 contain legal conclusions to which no

1 response is required. To the extent a response is required, Defendants deny the  
2 allegations in Paragraph 194.

3 195. The allegations in Paragraph 195 contain legal conclusions to which no  
4 response is required. To the extent a response is required, Defendants deny the  
5 allegations in Paragraph 195.

6 196. Defendants state that the Court dismissed Plaintiffs' purported tying  
7 claims. The allegations in Paragraph 196 contain legal conclusions to which no  
8 response is required. To the extent a response is required, Defendants deny the  
9 allegations in Paragraph 196.

10 197. The allegations in paragraph 197 contain legal conclusions to which no  
11 response is required. To the extent a response is required, Defendants deny those  
12 allegations. Defendants lack knowledge and information sufficient to form a belief  
13 as to the truth of the allegations concerning Total Visions profit margins and  
14 percentage of patients with VSP insurance, and on that basis deny them. Defendants  
15 deny the remaining allegations in Paragraph 197.

16 198. The allegations in paragraph 198 contain legal conclusions to which no  
17 response is required. To the extent a response is required, Defendants deny the  
18 allegations in Paragraph 198.

19 199. The allegations in Paragraph 199, including Paragraphs 199a through  
20 199h, contain legal conclusions to which no response is required. To the extent a  
21 response is required, Defendants deny the allegations in Paragraph 199, including  
22 Paragraphs 199a through 199h.

23 200. The allegations in paragraph 200 contain legal conclusions to which no  
24 response is required. To the extent a response is required, Defendants deny the  
25 allegations in Paragraph 200.

26 201. The allegations in paragraph 201 contain legal conclusions to which no  
27 response is required. To the extent a response is required, Defendants deny the  
28 allegations in Paragraph 201.

202. Defendants state that the Court dismissed Plaintiffs' purported tying claims. The allegations in paragraph 202 contain legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 202.

203. Defendants admit that it is engaged in interstate commerce. Defendants deny the remaining allegations in Paragraph 203.

204. Defendants admit that VSP provides reimbursement under its insurance policies for a significant amount of optometry goods that are produced in states other than California, including Marchon goods, and that Marchon has its headquarters in New York. Defendants lack information sufficient to form a belief as to the truth of the allegations that Total Vision practices sell a significant amount of optometry goods that are produced in other states. Defendants deny the remaining allegations in Paragraph 204.

### FIRST CAUSE OF ACTION

**(Unfair Competition – Cal. Bus. & Prof. Code § 17200 et seq.)**

**(Total Vision, P.C. Against All Defendants)**

205. Defendants repeat and reallege each and every Answer contained in the foregoing paragraphs as if fully restated herein.

206. The allegations in paragraph 206 contain legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 206.

207. The allegations in paragraph 207 contain legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 207.

208. The allegations in paragraph 208 contain legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 208.

209. The allegations in paragraph 209 contain legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 209.

210. Defendants admit that Total Vision, P.C. is seeking injunctive relief but deny that such relief is warranted or proper. Defendants deny the remaining allegations in Paragraph 210.

## SECOND CAUSE OF ACTION

**(Monopolization – Sherman Act, 15 U.S.C. §§ 2, 15)**

**(Total Vision, P.C. Against VSP)**

211. Defendants repeat and reallege each and every Answer contained in the foregoing paragraphs as if fully restated herein.

212. The allegations in paragraph 212 contain legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 212.

213. The allegations in paragraph 213 contain legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 213.

214. The allegations in paragraph 214 contain legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 214.

215. The allegations in paragraph 215 contain legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 215.

**THIRD CAUSE OF ACTION**

**(Attempted Monopolization – Sherman Act, 15 U.S.C. §§ 2, 15)**

**(Total Vision, P.C. Against VSP)**

216. Defendants repeat and reallege each and every Answer contained in the foregoing paragraphs as if fully restated herein.

217. The allegations in paragraph 217 contain legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 217.

218. The allegations in paragraph 218 contain legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 218.

219. The allegations in paragraph 219 contain legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 219.

220. The allegations in paragraph 220 contain legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 220.

221. The allegations in paragraph 221 contain legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 221.

**FOURTH CAUSE OF ACTION**

**(Tying – Sherman Act, 15 U.S.C. §§ 1, 2, 15 – Per Se Illegal)**

**(Total Vision, P.C. Against VSP)**

222. Defendants state that this Fourth Cause of Action has been dismissed by the Court and no longer requires a response. To the extent a response is required, Defendants repeat and reallege each and every Answer contained in the foregoing paragraphs as if fully restated herein.

1           223. Defendants state that this Fourth Cause of Action has been dismissed  
2 by the Court and no longer requires a response. To the extent a response is required,  
3 the allegations of Paragraph 223 are denied.

4           224. Defendants state that this Fourth Cause of Action has been dismissed  
5 by the Court and no longer requires a response. To the extent a response is required,  
6 the allegations of Paragraph 224 are denied.

7           225. Defendants state that this Fourth Cause of Action has been dismissed  
8 by the Court and no longer requires a response. To the extent a response is required,  
9 the allegations of Paragraph 225 are denied.

10          226. Defendants state that this Fourth Cause of Action has been dismissed  
11 by the Court and no longer requires a response. To the extent a response is required,  
12 the allegations of Paragraph 226 are denied.

13  
14                                   **FIFTH CAUSE OF ACTION**

15                   **(Tying – Rule of Reason – Sherman Act, 15 U.S.C. §§ 1, 2, 15)**

16                                   **(Total Vision, P.C. Against VSP)**

17          227. Defendants state that this Fifth Cause of Action has been dismissed by  
18 the Court and no longer requires a response. To the extent a response is required,  
19 Defendants repeat and reallege each and every Answer contained in the foregoing  
20 paragraphs as if fully restated herein.

21          228. Defendants state that this Fifth Cause of Action has been dismissed by  
22 the Court and no longer requires a response. To the extent a response is required, the  
23 allegations of Paragraph 228 are denied.

24          229. Defendants state that this Fifth Cause of Action has been dismissed by  
25 the Court and no longer requires a response. To the extent a response is required, the  
26 allegations of Paragraph 229 are denied.

27          230. Defendants state that this Fifth Cause of Action has been dismissed by  
28 the Court and no longer requires a response. To the extent a response is required, the

allegations of Paragraph 230 are denied

231. Defendants state that this Fifth Cause of Action has been dismissed by the Court and no longer requires a response. To the extent a response is required, the allegations of Paragraph 231 are denied.

232. Defendants state that this Fifth Cause of Action has been dismissed by the Court and no longer requires a response. To the extent a response is required, the allegations of Paragraph 232 are denied.

### **SIXTH CAUSE OF ACTION**

**(Tying – Cal. Bus. & Prof. Code § 16720 et seq.)**

**(Total Vision, P.C. Against VSP)**

233. Defendants state that this Sixth Cause of Action has been dismissed by the Court and no longer requires a response. To the extent a response is required, Defendants repeat and reallege each and every Answer contained in the foregoing paragraphs as if fully restated herein.

234. Defendants state that this Sixth Cause of Action has been dismissed by the Court and no longer requires a response. To the extent a response is required, the allegations of Paragraph 234 are denied.

235. Defendants state that this Sixth Cause of Action has been dismissed by the Court and no longer requires a response. To the extent a response is required, the allegations of Paragraph 235 are denied.

236. Defendants state that this Sixth Cause of Action has been dismissed by the Court and no longer requires a response. To the extent a response is required, the allegations of Paragraph 236 are denied.

237. Defendants state that this Sixth Cause of Action has been dismissed by the Court and no longer requires a response. To the extent a response is required, the allegations of Paragraph 237 are denied.



**SEVENTH CAUSE OF ACTION**

**(Monopolization – Refusal to Deal – Sherman Act, 15 U.S.C. §§ 2, 15)**

**(Plaintiffs Against VSP)**

238. Defendants repeat and reallege each and every Answer in the foregoing paragraphs as if fully restated herein.

239. The allegations in paragraph 239 contain legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 239.

240. The allegations in paragraph 240 contain legal conclusions to which no response is required. To the extent a response is required Defendants deny the allegations in Paragraph 240.

241. The allegations in paragraph 241 contain legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 241.

242. To the extent, the allegations in paragraph 242 contain legal conclusions, no response is required. To the extent a response is required, Defendants deny those allegations. Defendants admit that VSP has chosen to no longer do business with Plaintiffs after the parties' 2020 Agreement expired, as it has a right to do. Defendants deny the remaining allegations in Paragraph 242.

243. To the extent, the allegations in paragraph 243 contain legal conclusions, no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 243.

244. The allegations in paragraph 244 contain legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 244.

**EIGHTH CAUSE OF ACTION**

**(Intentional Interference with Prospective Business Relations)**

**(Plaintiffs Against VSP)**

245. Defendants state that this Eight Cause of Action has been dismissed by the Court and no longer requires a response. To the extent a response is required, Defendants repeat and reallege each and every Answer to the allegations contained in the foregoing paragraphs as if fully restated herein.

246. Defendants state that this Eight Cause of Action has been dismissed by the Court and no longer requires a response. To the extent a response is required, the allegations of Paragraph 246 are denied.

247. Defendants state that this Eight Cause of Action has been dismissed by the Court and no longer requires a response. To the extent a response is required, the allegations of Paragraph 247 are denied.

248. Defendants state that this Eight Cause of Action has been dismissed by the Court and no longer requires a response. To the extent a response is required, the allegations of Paragraph 248 are denied.

249. Defendants state that this Eight Cause of Action has been dismissed by the Court and no longer requires a response. To the extent a response is required, the allegations of Paragraph 249 are denied.

250. Defendants state that this Eight Cause of Action has been dismissed by the Court and no longer requires a response. To the extent a response is required, the allegations of Paragraph 250 are denied.

251. Defendants state that this Eight Cause of Action has been dismissed by the Court and no longer requires a response. To the extent a response is required, the allegations of Paragraph 251 are denied.

252. Defendants state that this Eight Cause of Action has been dismissed by the Court and no longer requires a response. To the extent a response is required, the allegations of Paragraph 252 are denied.

1           253. Defendants state that this Eight Cause of Action has been dismissed by  
2 the Court and no longer requires a response. To the extent a response is required, the  
3 allegations of Paragraph 253 are denied.

4  
5                   **REQUEST FOR RELIEF AND DEMAND FOR JURY TRIAL**

6           Defendants deny that Plaintiffs are entitled to any of the relief they request or  
7 any other relief. Moreover, Defendants deny that Plaintiffs are entitled to a trial by  
8 jury on any claim. Defendants request that Plaintiffs' Complaint be dismissed with  
9 prejudice, the Court find that Plaintiffs are not entitled to any judgment or relief, the  
10 Court enter judgment in favor of Defendants, and that the Court award Defendants  
11 their attorneys' fees, costs, and expenses, and such other and further relief as the  
12 Court deems just and proper.

13  
14                   **AFFIRMATIVE DEFENSES**

15           Subject to their responses to Paragraphs 1 through 253 of the Complaint  
16 above, upon information and belief, and without assuming any burden that they  
17 would not otherwise bear, Defendants assert the following defenses and affirmative  
18 defenses to Plaintiffs' claims. Defendants reserve the right to add any and all  
19 additional affirmative defenses as they become known, including through  
20 subsequent discovery.

21                   **FIRST AFFIRMATIVE DEFENSE**

22           1.       Plaintiffs' Complaint and each cause of action contained therein fails to  
23 state a claim upon which relief can be granted.

24                   **SECOND AFFIRMATIVE DEFENSE**

25           2.       Plaintiffs' claims are limited or barred, in whole or in part, by the  
26 doctrines of settlement and release under the 2020 Agreement.

27           3.       In exchange for allowing Plaintiffs an additional three-year period in  
28 the VSP network so as to allow them to prepare to and exit the VSP doctor network,

1 and other benefits enjoyed by Plaintiffs during the life of the 2020 Agreement,  
2 Plaintiffs agreed in the 2020 Agreement not to pursue the alleged claims set forth in  
3 the Complaint.

4 **THIRD AFFIRMATIVE DEFENSE**

5 4. Plaintiffs' claims are barred or limited, in whole or in part, by the  
6 doctrine of accord and satisfaction based on the 2020 Agreement.

7 5. In exchange for allowing Plaintiffs an additional three-year period in  
8 the VSP network so as to allow them to prepare to and exit the VSP doctor network,  
9 and other benefits enjoyed by Plaintiffs during the life of the 2020 Agreement,  
10 Plaintiffs agreed in the 2020 Agreement not to pursue the alleged claims set forth in  
11 the Complaint.

12 **FOURTH AFFIRMATIVE DEFENSE**

13 6. Plaintiffs' claims are limited or barred, in whole or in part, by the  
14 applicable statute(s) of limitations.

15 **FIFTH AFFIRMATIVE DEFENSE**

16 7. Plaintiffs' claims are limited or barred, in whole or in part, because one  
17 or more of the Plaintiffs lack standing to sue.

18 **SIXTH AFFIRMATIVE DEFENSE**

19 8. Plaintiffs' claims are limited or barred, in whole or in part, by the  
20 equitable doctrines of laches, waiver, and/or estoppel.

21 9. In exchange for allowing Plaintiffs an additional three-year period in  
22 the VSP network so as to allow them to prepare to and exit the VSP doctor network,  
23 and other benefits enjoyed by Plaintiffs during the life of the 2020 Agreement,  
24 Plaintiffs chose to enter the 2020 Agreement with the terms now challenged in this  
25 litigation.

26 **SEVENTH AFFIRMATIVE DEFENSE**

27 10. Plaintiffs' claims are limited or barred, in whole or in part, due to their  
28 failure to mitigate their injuries and damages, if any.

1           11. As part of the 2020 Agreement, Defendants and Plaintiffs agreed to a  
2 three-year period so as to allow Plaintiffs to prepare to and exit the VSP doctor  
3 network.

4                           **EIGHTH AFFIRMATIVE DEFENSE**

5           12. The injuries and damages alleged by Plaintiffs do not constitute legally  
6 cognizable antitrust injuries.

7                           **NINTH AFFIRMATIVE DEFENSE**

8           13. The relief sought by Plaintiffs is limited or barred, in whole or in part,  
9 because the alleged damages sought are too speculative and uncertain.

10                          **TENTH AFFIRMATIVE DEFENSE**

11           14. Plaintiffs' claims are limited or barred, in whole or in part, because the  
12 conduct alleged did not cause any harm or injury to consumers or competition.

13                          **ELEVENTH AFFIRMATIVE DEFENSE**

14           15. Plaintiff's claims are limited or barred, in whole or in part, because the  
15 conduct alleged was lawful, justified, and pro-competitive, constituted bona fide  
16 business practices, and was carried out in furtherance of Defendants' independent  
17 and legitimate business interests.

18           16. Given its focus on advancing the interests of independently owned,  
19 private practice of optometry, where practicable, VSP has sought to limit its network  
20 relationships with optometry practices owned by corporate entities or private equity  
21 firms wherein the practicing optometrist did not control the retail element of his or  
22 her practice.

23           17. Plaintiffs' claims fail because VSP's challenged conduct presents a  
24 legitimate business justification.

25                          **TWELTH AFFIRMATIVE DEFENSE**

26           18. Plaintiffs' claims are limited or barred, in whole or in part, because  
27 none of the conduct alleged substantially lessened competition within any properly  
28 defined market.

1           19. Plaintiffs fail to adequately plead relevant product and geographic  
2 markets—a necessary component of their antitrust claims. Thus, Plaintiffs’ claims  
3 are barred.

4                           **THIRTEENTH AFFIRMATIVE DEFENSE**

5           20. Plaintiffs’ claims are limited or barred, in whole or in part, by the First  
6 Amendment and Noerr-Pennington Doctrine.

7           21. To the extent Plaintiffs allege that VSP violated the antitrust laws by  
8 engaging in any lobbying activity with respect to certain laws enacted in Nevada  
9 and Texas or the Dental and Optometric Care Access Act reintroduced in the Senate  
10 in May 2023, Plaintiffs’ claims are barred by the First Amendment and the Noerr-  
11 Pennington doctrine.

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**COUNTERCLAIMS**

As and for its Counterclaim, Counterclaim Plaintiff Vision Service Plan (“VSP”) alleges as follows:

**THE PARTIES**

1. Counterclaim Plaintiff VSP is a California corporation with its principal place of business in Rancho Cordova, California.

2. VSP’s historical mission has been to support the interests of independent optometrists by making vision care more affordable and accessible to the public.

3. On information and belief, Total Vision, P.C. is a California professional corporation with its principal place of business in San Diego, California.

4. On information and belief, Total Vision, LLC is a Delaware limited liability corporation with its principal place of business in Irvine, California.

5. Total Vision, LLC is a wholly-owned subsidiary of Total Vision Interco, LLC (“Interco”).

6. On information and belief, Interco is a Delaware limited liability company with its principal place of business in Mission Viejo, California.

**JURISDICTION AND VENUE**

7. This Court has supplemental jurisdiction over the subject matter of VSP’s counterclaims pursuant to 28 U.S.C. § 1367(a).

8. Total Vision, LLC and Total Vision, P.C. (collectively, “Total Vision”) are subject to personal jurisdiction in this district because they have principal places of business in California and have purposefully availed themselves of the benefits and protections of this jurisdiction, including by filing their complaint against VSP in this judicial district.



9. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2) because the events giving rise to VSP's counterclaims arose in this judicial district when Total Vision breached their contract obligations under the 2020 Agreement.

## FACTS

10. VSP and Total Vision entered into a 2019 Agreement with an effective date of May 22, 2019.

11. A true and correct copy of the 2019 Agreement is attached as Exhibit A to the Affidavit of Lisa Fields, ECF No. 14-2 at Page ID #:138-161 (hereinafter, the “2019 Agreement”).

12. The 2019 Agreement did not guarantee Total Vision access to VSP's network from year-to-year. The 2019 Agreement contained a one-year term that would continue for successive one-year terms unless either party gave notice of nonrenewal prior to expiration of any term.

13. Given its focus on advancing the interests of independently owned, private practice of optometry, where practicable, VSP has sought to limit its network relationships with optometry practices owned by corporate entities or private equity firms wherein the practicing optometrist did not control the retail element of his or her practice.

14. During the initial term of the 2019 Agreement, VSP expressed concerns to Total Vision about private equity ownership of Total Vision, including the tendency of private equity to sell or “flip” its ownership stake within a few years.

15. One or more private equity companies have ownership interests in Total Vision.

16. On information and belief, Interco is owned in substantial part by Bregal Investments, Inc. (“Bregal Investments”) and/or Bregal Private Equity Partners (“BPEP”) (collectively “Bregal”).

17. Bregal Investments and BPEP are private equity firms with offices located in New York, New York.

1           18. On information and belief, the owners of the optometry practices that  
2 Total Vision acquired were paid in part with an equity interest in Interco.

3           19. On information and belief, Total Vision represented to some of the  
4 owners of the optometry practices that it acquired, or sought to acquire, that Bregal  
5 intended to sell the Total Vision business within 3 to 5 years.

6           20. On information and belief, Total Vision also represented to some of the  
7 owners of the optometry practices that it acquired, or sought to acquire, that their  
8 ownership stakes in Interco could multiply in value by 3 to 5 times or more based  
9 on comparable private equity transactions.

10          21. As permitted under the terms of the 2019 Agreement, VSP provided  
11 Total Vision with a timely notice of nonrenewal—more than ninety (90) days  
12 before the end of the one-year term.

13          22. Pursuant to VSP's notice of nonrenewal, the 2019 Agreement would  
14 have expired in 2020.

15          23. Thereafter, VSP and Total Vision negotiated the terms of a new  
16 agreement for more than two months during the spring and summer of 2020.

17          24. VSP and Total Vision were each represented by their own attorneys  
18 during the negotiations of a new agreement in 2020.

19          25. During the negotiations in 2020, representatives of Total Vision  
20 represented their belief that VSP's actions were implicating antitrust laws and  
21 indicated they may sue VSP for those alleged violations. VSP, however, continued  
22 to negotiate a new agreement with Total Vision.

23          26. During the negotiations in 2020, Total Vision objected to some of the  
24 contract terms proposed by VSP.

25          27. Similarly, during the negotiations in 2020, VSP objected to some of the  
26 contract terms proposed by Total Vision.

1           28. Total Vision and VSP made several compromises during their  
2 negotiations of a new agreement such that neither side got all of the terms they had  
3 asked for during their negotiations.

4           29. VSP and Total Vision, LLC entered into a written agreement with an  
5 effective date of September 29, 2020 (the “2020 Agreement”).

6           30. A true and correct copy of the 2020 Agreement is attached as Exhibit B  
7 to the Affidavit of Lisa Fields, ECF No. 14-3 at Page ID #:163-197.

8           31. Section 7.1 of the 2020 Agreement states: “The term of this Agreement  
9 shall begin on the Effective Date and continue for a period of three (3) years.”

10          32. As part of the 2020 Agreement, Total Vision agreed to settle and  
11 release its claims, including its alleged antitrust claims, against VSP and VSP’s  
12 affiliated entities, in exchange for a three-year contract term that would allow Total  
13 Vision to more gradually transition to an out of network status.

14          33. As part of the 2020 Agreement, Total Vision also promised not to sue  
15 VSP or VSP’s affiliates when the 2020 Agreement expired.

16          34. Total Vision enjoyed the benefits of and profited from the 2020  
17 Agreement during the entire 3-year term of that Agreement.

18          35. In or around October 2022, prior to the expiration of the 2020  
19 Agreement, a third-party broker – Hunter Puckett with the HPC Puckett Advisory  
20 Company – contacted VSP for the purpose of soliciting an offer from VSP to  
21 purchase Total Vision, including Total Vision, LLC, Total Vision, P.C., and  
22 Interco.

23          36. In February 2023, VSP provided Total Vision’s broker with a  
24 nonbinding offer to purchase it, but Total Vision rejected that offer.

25          37. Total Vision declined to provide VSP with any counteroffer.

26          38. On or about March 7, 2023, VSP reminded Total Vision that the 2020  
27 Agreement would expire by its terms on September 29, 2023.

28

1           39. On or about March 7, 2023, VSP also expressed to Total Vision that  
2 VSP would not renew the 2020 Agreement.

3           40. Prior to the expiration of the 3-year term of the 2020 Agreement, Total  
4 Vision's counsel threatened to sue VSP if VSP would not continue the 2020  
5 Agreement beyond the 3-year term described in the agreement.

6           41. VSP refused to accede to Total Vision's threat to sue.

7           42. On September 26, 2023, Total Vision, LLC and Total Vision, P.C.  
8 commenced this action against VSP and its affiliates. (*See* Compl., ECF. No. 1.)

9           43. The 2020 Agreement expired on September 29, 2023.

10          44. Section 7.3 of the 2020 Agreement states:

11               **Effect of Termination.** On the third anniversary of the  
12               Effective Date, [VSP] will remove from the VSP Doctor  
13               Network all locations deemed included in Schedule 2.1, and  
14               those Providers will no longer be eligible under this Agreement  
15               to be VSP Doctors. [. . . ]

16          45. Section 7.3.4 of the 2020 Agreement states: "Each Party shall remain  
17 liable for all provisions of the Agreement that survive termination as outlined in  
18 Section 7.7." Section 7.7 of the 2020 Agreement lists provisions that would survive  
19 expiration or termination, including Section. 7.10.

20          46. The 2020 Agreement's obligations set forth in section 7.10, titled  
21 Mutual Release and Covenant Not to Sue, apply to Total Vision, LLC.

22          47. The 2020 Agreement's obligations set forth in section 7.10, titled  
23 Mutual Release and Covenant Not to Sue, also apply to Total Vision, P.C. because  
24 it is an affiliate of Total Vision, LLC.

25          48. Section 7.10.1 of the 2020 Agreement states:

26               A goal of this agreement is to enable [Total Vision] to continue  
27               growing its business as it and its affiliated providers, optometry  
28               practices and locations prepare to and exit the VSP doctor

1 network. [Total Vision] acknowledges that there are and, to the  
2 best of its knowledge and belief, will be enough VSP doctors to  
3 provide covered services to members, both during and after the  
4 term of this agreement. It is also a goal of this agreement for this  
5 exit to occur without the threat of litigation by a party without  
6 exempting either party from liability to unaffiliated third parties.  
7 To these ends, the parties have agreed to the following mutual  
8 release and covenant not to sue.

9 49. Pursuant to section 7.10's Mutual Release and Covenant Not to Sue  
10 provision under the 2020 Agreement, Total Vision, LLC mutually agreed on its  
11 own behalf and on behalf of its affiliated entities, including Total Vision, P.C., to  
12 settle and release any and all causes of action and claims against VSP and its  
13 affiliates, including Defendants VSP Ventures Management Services, LLC, Altair  
14 Eyewear, Inc., Marchon Eyewear, Inc., Eyefinity, Inc., and VSP Labs, Inc.

15 50. Section 7.10.2 of the 2020 Agreement states:

16 **Mutual release.** The Parties, for themselves and their respective  
17 parent companies, subsidiaries, affiliated entities, predecessors,  
18 successors, assigns, officers, directors, shareholders, members,  
19 employees, attorneys and agents ("Releasing Parties"), release  
20 one another and the other's their respective parent companies,  
21 subsidiaries, affiliated entities, predecessors, successors, assigns,  
22 officers, directors, shareholders, members, employees, attorneys  
23 and agents ("Released Parties"), from any and all causes of action  
24 and claims for relief, known or unknown, which the releasing  
25 parties presently have against the Released Parties, [ . . . ] .

26 51. Section 7.10.3 of the 2020 Agreement states:

27 **Mutual Covenant Not to Sue.** Except as permitted by section  
28 2.1 of this Agreement, neither Party will directly, or indirectly

1 through an Affiliate, Optometry Practice or Provider, commence  
2 any proceeding against the other Party during or after the term of  
3 this Agreement arising from or relating to the denial of an  
4 application to become a VSP Doctor or removal of a VSP Doctor  
5 from the VSP Doctor Network as a result of their affiliating with  
6 or entering into an acquisition or other transaction with [Total  
7 Vision] or a Provider or on the basis that the applicant or the VSP  
8 Doctor does not have ownership and control of any or all aspects  
9 of their practice including dispensary.. The Parties acknowledge  
10 that, except as permitted by section 2.1 of this Agreement, the  
11 Providers and their respective Optometry Practices and Locations  
12 are not eligible to be in the VSP Doctor Network or VSP  
13 Doctors.

14 52. Section 7.10.4 of the 2020 Agreement states:

15 Should either Party commence any action against the other Party  
16 that breaches this 7.10, and such action is dismissed on its merits  
17 in whole or in part on the basis that the action was settled or  
18 barred by this section 7.10, the Party that breached this section  
19 7.10 shall pay all legal fees and costs incurred by the other Party  
20 in the action.

21 53. Total Vision, LLC directly, and indirectly through Total Vision, P.C.,  
22 commenced this action against VSP and its affiliates asserting claims that Total  
23 Vision had released and covenanted not to sue, breaching section 7.10 of the 2020  
24 Agreement and breaching the contractual duty of good faith and fair dealing.

25 54. Due to Total Vision's breach of section 7.10 of the 2020 Agreement,  
26 VSP has suffered damages.

**COUNT I – BREACH OF CONTRACT AND BREACH OF THE DUTY OF  
GOOD FAITH AND FAIR DEALING  
(TOTAL VISION, LLC)**

55. VSP repeats and realleges each and every allegation contained in the foregoing paragraphs of its counterclaim, and each of its Answers to the Complaint above, as if fully restated herein.

56. VSP and Total Vision, LLC are parties to the 2020 Agreement.

57. Total Vision, LLC materially breached the 2020 Agreement by directly, and indirectly through its affiliate Total Vision, P.C., commencing this action against VSP and VSP's affiliates.

58. Total Vision, LLC breached its contractual duty of good faith and fair dealing by directly and indirectly through its affiliate Total Vision, P.C., commencing this action against VSP and VSP's affiliates.

59. As a result of Total Vision, LLC's breach of the 2020 Agreement, VSP has been damaged in an amount to be determined at trial.

**COUNT II – BREACH OF CONTRACT AND BREACH OF THE DUTY OF  
GOOD FAITH AND FAIR DEALING  
(TOTAL VISION, P.C.)**

60. VSP repeats and realleges each and every allegation contained in the foregoing paragraphs of its counterclaim as if fully restated herein.

61. VSP and Total Vision, LLC are parties to the 2020 Agreement.

62. Because Total Vision, P.C. is an affiliate of Total Vision, LLC, Total Vision, P.C. is bound by the contractual obligations set forth in section 7.10 of the 2020 Agreement.

63. Total Vision, P.C. materially breached the 2020 Agreement by directly, and indirectly as Total Vision, LLC.'s affiliate, commencing this action against VSP and VSP's affiliates.



64. Total Vision, P.C. breached its contractual duty of good faith and fair dealing by directly, and indirectly as Total Vision, LLC.'s affiliate, commencing this action against VSP and VSP's affiliates.

65. As a result of Total Vision, P.C.'s breach of the 2020 Agreement, VSP has been damaged in an amount to be determined at trial.

**PRAYER FOR RELIEF**

WHEREFORE, Defendants and Counterclaim Plaintiff VSP demands judgment in its favor against Total Vision, LLC and Total Vision P.C. for the following relief:

- (A) Dismissal of all claims asserted in the Complaint with prejudice;
- (B) On Counterclaim Plaintiff's Counterclaim, an award of damages in an amount to be determined at trial;
- (C) An award of the attorneys' fees and costs incurred in this action; and
- (D) Any further relief that the Court determines is just and proper.

Dated: March 26, 2024

By: /s/ Laura A. Brenner

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